



IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Daniel BUTZKE et al.

Examiner: MEAH, Mohammad Y.

Serial No.: 10/542,769

Group Art Unit: 1652

Filed: July 20, 2005

Title: **L-AMINO ACID OXIDASE WITH CYTOTOXIC ACTIVITY FROM APLYSIA PUNCTATA**

RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated October 17, 2006, Applicants hereby elect, with traverse, Group I (claims 1, 51–57, and 64–67) drawn to isolated polypeptide comprising of SEQ ID NO:2 and fragments thereof.

Withdrawal of this restriction requirement is respectfully requested. The claims in the instant application involve related subject matter, for example, an L-amino acid oxidase, as recited in Applicants' elected Group I. A search of all the claims would comprise overlapping subject matter, and it would not be an undue burden on the Examiner to carry out a search. “If search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct invention.” (Emphasis added.) See, M.P.E.P. § 803. Accordingly, it is respectfully submitted that the restriction be withdrawn.

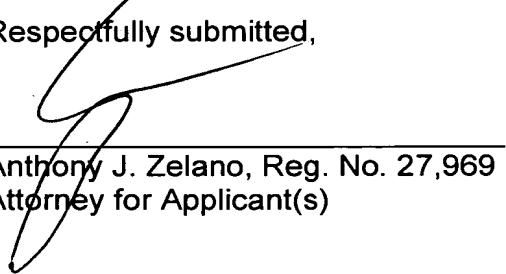
Although it is believed that a restriction of the original claims is not proper at all in the subject application as discussed above, Applicants respectfully submit that at a minimum, the restriction requirement should be modified to combine Group 10 and Group 19 with the elected Group I because they comprise overlapping subject matter. The claims

in Group 10 (claims 71, 75, and 79), which are drawn to a method of diagnosing or treating diseases, and the claims in Group 19 (claims 83–92),), which are drawn to a method for modulating the level and/or activity of a target substance in a cell, both utilize a polypeptide of the elected Group I. “If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product may be rejoined.” See M.P.E.P. § 806.05. Rejoinder of these claims is therefore courteously requested.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined.

No fees are believed to be due with this response; however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,


Anthony J. Zelano, Reg. No. 27,969
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: **WEICKM-0046**
Date: November 17, 2006